IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.896 OF 2004

The State of Maharashtra. ..Appellant.
Versus
Satish Baburao Punjekar
and Ors. ..Respondents.

..

Mr.A.R.Patil, APP, for the Appellant-State.
Mr.M.S.Mohite, Adv. & Mr.S.V.Kotwal, Adv. for Respondent Nos.3 to 9 and 11 & 12.

..

CORAM : SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 07, 2007.

P.C.:

1. The appellant-State of Maharashtra has filed this appeal against the judgment and order of acquittal dated 17.01.2004 passed by the learned JMFC (Railway), Manmad, in R.C.C. No.24 of 1994. By the said judgment and order, the learned Magistrate acquitted respondents-accused of the offences punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

2. Heard the learned APP for the Appellant-State and the learned Advocates for

Respondent Nos.3 to 9 and 11 & 12. None appears for the remaining respondents though served. Perused the judgment and order of the learned Magistrate as well as the evidence which has been produced by the learned APP.

3. The prosecution case is that broken iron pieces of railway track came to be stolen. The said property was valued at Rs.63,000/-. It is further the prosecution case that respondent No.1 made a statement pursuant to which he led the police and panchas to respondent No.2 from whom the railway property came to be seized. Though respondent No.1-accused No.1 is supposed to have made a statement in the presence of panchas, pursuant to which the recovery came to be made, and the material was found with respondent No.2, it is seen that this alleged voluntary statement by respondent No.1 is not signed by the panch witnesses. On perusal of the said panchnama, it is seen that it is not in the proper format nor does the panchnama show that the statement made by respondent No.1 was voluntary. It is pursuant to this panchnama that accused No.1 is alleged to

have led the police and panchas to respondent No.2-accused No.2. The entire investigation is based on the sole statement made by original accused No.1 to the police. The panchas have also not supported the prosecution. In the present case, the entire investigation is based on the sole statement made by respondent No.1 and recovery pursuant thereto. Looking to the above facts, no reliance can be placed on the said panchnama and recovery. The learned Magistrate has taken this aspect into consideration and has thereafter acquitted the respondents.

4. Looking to material on record, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

5. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66**

Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view, hence, no interference is called for. Appeal against acquittal is dismissed.

(SMT.V.K.TAHILRAMANI,J.)